IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3420 of 1987

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRDHARBHAI JIVABHAI PATEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 3420 of 1987

MR TEJAS BAROT for M/S TRIVEDI & GUPTA for the Petitioner

MR MUKESH PATEL, AGP for Respondents Nos. 1-2

Respondent No. 3 SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 28/09/2004

ORAL JUDGEMENT

The petitioner, a Deputy Executive Engineer in the State Government, challenges the order dated 28th March, 1987. By impugned order the petitioner has been, in exercise of power conferred by clause (aa)(i) of Rule 161(1) of the Bombay Civil Services Rules, 1959, retired compulsorily on attaining the age of 50 years.

Learned advocate Mr.Barot has submitted that the aforesaid power of compulsory retirement before the age of superannuation (premature retirement) can be exercised in public interest keeping in view the entire service record of the Government servant. The said power cannot be exercised to circumvent disciplinary proceeding or Article 311 of the Constitution of India. In the present case, the petitioner had entered the Government service as an Overseer. In course of time he earned promotion as Deputy Engineer (now designated as Deputy Executive Engineer). The petitioner having earned promotion, it cannot be said that the petitioner's service was not satisfactory or that it was not in public interest to continue him in service after the age of 50 years. Since his promotion to the post of Deputy Engineer in the year 1977, he was also permitted to cross Efficiency Bar in the year 1981. Since his promotion as Deputy Engineer no adverse entry was ever made in the service record of the petitioner. However, the petitioner was facing a criminal prosecution and also disciplinary proceedings at the time of his premature retirement. Hence, it is evident that the power of premature retirement has been invoked to remove the petitioner from service without resorting to the disciplinary proceeding. Evidently, the impugned order has been made to circumvent the provisions of Article 311 of the Constitution of India. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of State of Gujarat v/s. Umedbhai M.Patel [(2001)3 SCC 314].

In the said matter the Hon'ble Court has restated the principles that govern the premature retirement of Government servants. Mr.Barot has particularly relied upon the observation that "...The order of compulsory retirement shall not be passed as a shortcut to avoid departmental enquiry when such course is more desirable" and "...Compulsory retirement shall not be imposed as a punitive measure." He has submitted that in the present case, as disclosed in the counter affidavit, on the date of premature retirement a criminal proceeding as well as disciplinary proceedings were pending against the petitioner. It was, therefore, required that the said

proceedings be brought to their logical terminus. Instead, the State Government has adopted shortcut and has resorted to the aforesaid power of premature retirement.

I am unable to agree with Mr.Barot. The impugned order of premature retirement expressly states that the disciplinary proceedings pending against the petitioner shall be continued even after the retirement. Thus, it cannot be said that the power of premature retirement has been invoked with a view to avoiding holding of or completion of the disciplinary proceedings. As disclosed in the counter affidavit made by the State Government, the petitioner's service as Deputy Engineer was far from being satisfactory and was tainted. In view of such service record, if the State Government has considered continuance of the petitioner in Government service against the public interest, such decision cannot be said to be erroneous, illegal or arbitrary. Copy of the Government's decision has been placed on the record of the matter. Perusal of the said noting suggests that the Review Committee of the State Government had considered the petitioner's case for continuance in Government service after he attained the age of 50 years. The service record of the petitioner since his promotion as Deputy Engineer was taken into consideration. The Review Committee opined that the petitioner was required to be retired prematurely.

It is well-settled that premature retirement is a condition of service and cannot be said to be a punishment. In case of the petitioner, the Review Committee considered the service record of the petitioner as Deputy Engineer. In my view, the decision of the Review Committee is based on relevant materials. The same cannot be said to be based on extraneous materials or to have been made to circumvent the requirement of disciplinary proceedings. The impugned order of premature retirement, therefore, does not warrant interference by this Court.

The petition is dismissed with cost. Rule is discharged.

(Ms. R.M.Doshit, J.)

/sakkaf